

“Such conduct must be put down”

The Military Arrest of Judge Charles H. Constable during the Civil War

STEPHEN E. TOWNE

In March 1863 troops under the command of Colonel Henry B. Carrington, headquartered in Indianapolis, crossed into Illinois and arrested Illinois Circuit Court Judge Charles H. Constable. Constable, an outspoken antiwar Democrat, was presiding in the courtroom of the Clark County Circuit Court in Marshall at the time of his arrest, and was hearing the case of two soldiers arrested and brought to his court for their arrest of four deserters from the United States Army. The arrest of Constable is cited by a number of historians as an example of military interference in the civil courts and civil authority during the Civil War. However, the facts of the incident are poorly understood, prompting historians to mistake the roles of several of the chief actors. Moreover, those historians have largely overlooked the significance of the episode in the development of the difficult relationship between military and civilian authorities played out during the war. A close examination of the incident, based on archival research into a variety of records previously overlooked by historians, supports very different conclusions.

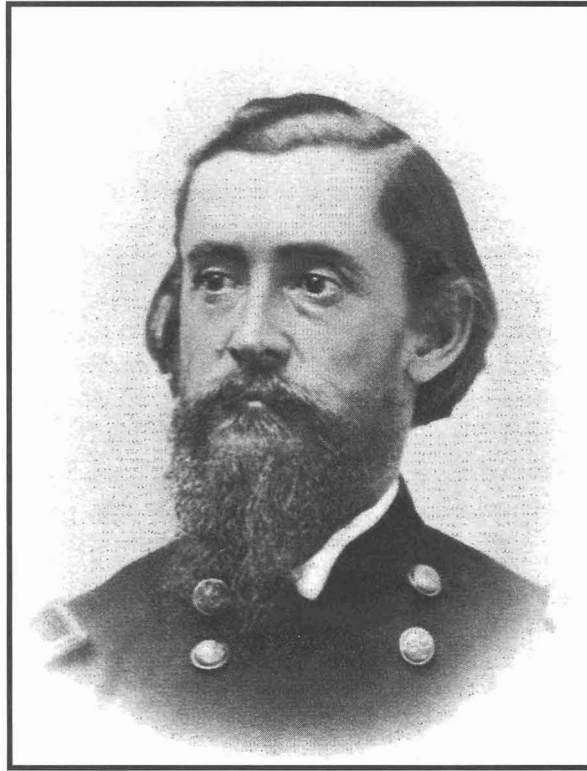
Accounts of Constable's arrest that appeared in the years after the end of the war were based on imperfect knowledge and faulty memories. Confusion existed over where the arrest occurred, with some placing the arrest in Coles County, while other accounts incorrectly averred that the judge was released on a writ of habeas corpus from a United States district judge shortly after his arrest. Charles H. Coleman and Paul H. Spence's well-known analysis of the March 1864 Charleston riot that involved Constable relied on the earlier erroneous accounts

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and repeated the errors of fact, which in turn have been repeated by other scholars.¹ Frank L. Klement was the most prominent historian to study the Constable arrest. Klement wrote a series of journal articles and books during his long career focusing on the midwestern Copperhead movement—the antiwar, peace Democrat wing of the Democratic Party. Klement argued strenuously and repeatedly that the long-standing view of the antiwar Democrats as a disloyal and traitorous body that attempted to aid the southern rebels was the product of Republican lies. Rather, he posited that those antiwar Democrats, the so-called “Copperheads” in the midwestern states of Ohio, Indiana, Illinois, Iowa, and Wisconsin, were cultural and political conservatives whose Jacksonian ideologies clashed with the radical changes brought forth by the Republicans in power in Washington, D.C. Throughout his many publications, Klement derided the Republican political and military leaders who were most active, in his view, in concocting “wanton fabrications” about secret plots and traitorous designs of the Copperhead organizations—the Knights of the Golden Circle and the Sons of Liberty.² Prominent among those singled out for censure was Carrington, the chief architect of the military intelligence network in the Midwest that was instrumental in detecting the activities of the secret organizations that aimed to upset political and military affairs in the North. Klement employed the Constable incident in an attempt to sully the reputation of Carrington. In Klement’s tellings of the Constable arrest, Carrington exceeded his authority, jurisdiction, and orders by blundering into Illinois to arrest the judge. Embarrassed by his move, his military superiors and Indiana Governor Oliver P. Morton acted to bail him out without

¹See Alexander Davidson and Bernard Stuvé, *A Complete History of Illinois from 1673 to 1873* (Springfield: Illinois Journal, 1874), 890–91; Theodore G. Risley, ed., *Illinois Historical, Wabash County Biographical* (Chicago: Munsell Publishing Company, 1911), 117; L. White Busbey, “Reminiscences of Uncle Joe Cannon: An Interview with the Former Speaker,” *Saturday Evening Post*, July 13, 1918, 12; Coleman and Spence, “The Charleston Riot, March 28, 1864,” *Journal of the Illinois State Historical Society* 33 (1940): 13–14; William Dudley Foulke, *Life of Oliver P. Morton, Including His Important Speeches* (Indianapolis: Bowen-Merrill, 1899), 1:384–85; Willard L. King, *Lincoln’s Manager, David Davis* (Cambridge, Mass.: Harvard University Press, 1960), 209; Robert P. Howard, *Illinois: A History of the Prairie State* (Grand Rapids, Mich.: William B. Eerdmans, 1972), 313.

²See Klement, “‘Brick’ Pomeroy: Copperhead and Curmudgeon,” *Wisconsin Magazine of History* 35 (1951–1952): 106–13, 156–57, “Copperheads and Copperheadism in Wisconsin: Democratic Opposition to the Lincoln Administration,” *ibid.* 42 (1958–1959): 182–88, “The Hopkins Hoax and the Golden Circle Rumors in Michigan: 1861–1862,” *Michigan History* 47 (1963): 1–14, “Rumors of Golden Circle Activity in Iowa during the Civil War Years,” *Annals of Iowa* 37 (1963–1965): 523–36, *The Limits of Dissent: Clement L. Vallandigham & the Civil War* (Lexington: University Press of Kentucky, 1970), “Phineas C. Wright, the Order of American Knights, and the Sanderson Exposé,” *Civil War History* 18 (1972): 5–23, “Ohio and the Knights of the Golden Circle: The Evolution of a Civil War Myth,” *Cincinnati Historical Society Bulletin* 32 (1974): 7–27, “Civil War Politics, Nationalism, and Postwar Myths,” *Historian* 38 (1975–1976): 419–38, and “Catholics as Copperheads during the Civil War,” *Catholic Historical Review* 80 (1994): 36–57.



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damage to his reputation or the Union effort.³ Other historians have followed Klement's lead in painting Carrington as an incompetent blunderer and overzealous partisan intent on smearing the Democratic opposition.⁴ However, Klement and the other historians got the facts wrong and omitted reference to key records in a variety of archives that point to different conclusions. Thus, it is well to reexamine the Constable case to form a new understanding of the episode and place it in its proper context.

³Ibid., *The Copperheads in the Middle West* (Chicago: University of Chicago Press, 1960), 68–70, “Carrington and the Golden Circle Legend in Indiana during the Civil War,” *Indiana Magazine of History* 61 (1965): 41–42, “Copperhead Secret Societies in Illinois during the Civil War,” *Journal of the Illinois State Historical Society* 48 (1955): 165, and *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War* (Baton Rouge: Louisiana State University Press, 1984), 26, 141.

⁴See G. R. Tredway, *Democratic Opposition to the Lincoln Administration in Indiana*, Indiana Historical Collections 48 (Indianapolis: Indiana Historical Bureau, 1973), 211–12, 276; Scott Owen Reed, “Military Arrests of Lawyers in Illinois during the Civil War,” *Western Illinois Regional Studies* 6 (Fall 1983): 5–22; Robert D. Sampson, “‘Pretty damned warm times’: The 1864 Charleston Riot and the ‘inalienable right of revolution,’” *Illinois Historical Journal* 89 (1996): 108–9. One historian has written about the Constable arrest in an effort to exonerate Carrington. However, the work is riddled with factual errors rendering it unreliable. See Catherine McKeen, “Henry Beebe Carrington: A Soldier’s Tale” (Ph.D. diss., State University of New York at Stony Brook, 1998), 99–104.

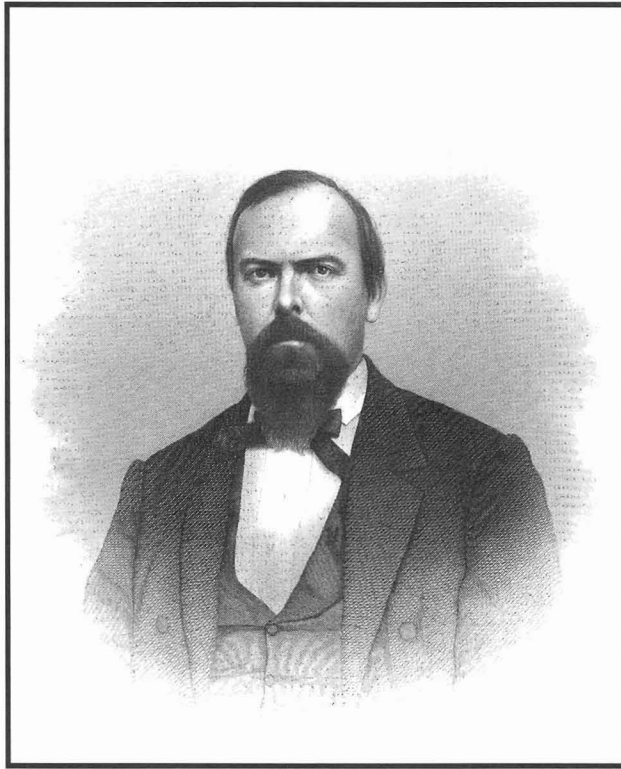
Desertion from Union armies was rampant in the winter and early spring of 1863. Thousands of federal soldiers had slipped away from their commands, leaving a depleted force with which to occupy parts of the South and subdue the rebellion. Major General William Rosecrans, commander of the Army of the Cumberland in Tennessee, complained that he was missing thirty thousand of his troops, many of whom enlisted in Illinois regiments, due to desertion.⁵ Federal commanders of posts in both the North and the South had orders to arrest any deserters they could find and return them as soon as possible to their commands. Acting on such orders, Sergeant John McFarland of the Thirty-first Indiana Infantry regiment and Sergeant Thomas Long of the First Indiana Cavalry regiment, both stationed at Terre Haute near the Illinois-Indiana state border, were ordered by Captain John Lindsay, a recruiting officer, to seek out and arrest deserters, as well as to seize all government property they encountered. The two sergeants, with a small force, ventured into Illinois on Friday, March 6, 1863, to scout around in Clark County. There they pursued a deserter who escaped, but captured another one shortly afterwards. The captured deserter told them of the presence nearby of two other deserters from his regiment, the 130th Illinois Infantry regiment. Arriving on Saturday at Livingston, a small village on Big Creek east of Marshall, the party arrested another deserter from the 130th and one from the 31st Indiana Infantry regiment. They then went to the house of another deserter, the brother of one already arrested. There they found still another deserter and arrested him. During that time, a brother of one of the arrested deserters—himself a deserter—attempted to liberate his brother. A soldier guarding the captured deserter shot at but missed the supposed liberator. The force then went to another deserter's house in the night, awoke him and arrested him. They took him under guard to the hotel in Livingston and held him until Sunday morning, March 8.⁶

During the night of March 7 Elizabeth Gamron, the mother of one of the deserters, contacted a local attorney to act on behalf of the arrested deserters. The attorney advised her to obtain a warrant from a local Justice of the Peace to arrest the soldiers for kidnapping, which she did.⁷ The following morning, Sunday, March 8, as McFarland later testified, he stepped outside the hotel to ready the horses for the return to Terre Haute with the captured deserters. "On returning I

⁵Ella Lonn, *Desertion During the Civil War* (1928; rpt., Lincoln: University of Nebraska Press, 1998), 204.

⁶For a report of the April 7, 1863, preliminary examination of Constable before the U.S. District Court of the Southern District of Illinois, see (Springfield) *Daily Illinois State Journal*, Apr. 8, 1863, p. 3, cols. 3–4.

⁷For the March 12, 1863, letter of McFarland, see (Terre Haute) *Daily Express*, Mar. 14, 1863. For the letter of Clark County prosecutor J. R. Cunningham, see (Springfield) *Daily Illinois State Register*, Mar. 21, 1863, p. 2, col. 3.



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stepped into the room where the prisoners were, and a man asked me if my name was Sergeant McFarland? I replied that it was. He slapped me on the shoulder and said I was his prisoner. He showed me a State's warrant for my arrest. I told him I should respect it." The man making the arrest was the Clark County sheriff. When McFarland ordered Long to take the prisoners to Terre Haute, the sheriff arrested Long, too. Later that morning the sheriff guided the soldiers and deserters to Marshall, the county seat, where McFarland was allowed to speak to an "able republican attorney," Robert L. Dulaney. The attorney advised him to obtain a hearing before Judge Constable of the Fourth Judicial Circuit, then in Marshall, and wrote a note to the judge. Constable arrived, transferred the matter to his court, and immediately, on a Sunday morning, commenced a judicial hearing at the courthouse.⁸

⁸*Daily Illinois State Journal*, Apr. 8, 1863; *Daily Illinois State Register*, Mar. 21, 1863.

Constable, a native of Maryland, had come to Illinois some twenty-five years before and established himself as an attorney of "fine abilities." Described by a contemporary as "one of the handsomest men I ever saw" and a man of "fine culture and elegant manners," the popular young lawyer enjoyed a large practice in the judicial circuits of eastern Illinois, and he participated in state politics. In earlier years a Whig, he was a friend and political ally of fellow Whig attorney Abraham Lincoln. Lincoln wrote letters of recommendation for Constable to obtain federal appointments. However, Constable failed to receive preferment, and in October 1851, while on the circuit and in the presence of Lincoln, he lashed out at the Whig Party for its bad treatment of its friends. Fellow Illinois Whig David Davis, also present, wrote to his wife: "there has been a quarrel between Lincoln and Constable on politics, a serious one. I feel very sorry and nervous about it." According to an early Lincoln biographer: "Mr. Lincoln felt the charge [against the Whig Party] as keenly as if it had been a personal one."

[Lincoln] stood with his coat off, shaving himself before his glass. He had heard the charges without saying a word, but when Mr. Constable alluded to himself, as having been badly treated, he turned fiercely upon him, and said, "Mr. Constable, I understand you perfectly, and have noticed for some time back that you have been slowly and cautiously picking your way over to the democratic party." Both men were angry, and it required the effort of all the others present to keep them from fighting. Mr. Lincoln seemed for a time, as one of the spectators of the scene remarks, to be "terribly willing."

Though the two men cooled down and "adjusted" their differences, Constable shortly thereafter joined the Democratic Party and was elected to the bench of the Fourth Judicial Circuit in 1861.⁹

At the courthouse in Marshall before Constable, two of the deserters, Hugh Scott and James Gamron, testified that they were not deserters but had been captured by rebel forces in Tennessee and paroled, returning home to Illinois, a story that was later found to be a lie. The sergeants produced their papers from their Indianapolis and Terre Haute military superiors, citing War Department instructions and including an order from Indiana Adjutant General Laz Noble to make arrests in Vigo and surrounding Indiana counties. But the judge refused to

⁹See Usher F. Linder, *Reminiscences of the Early Bench and Bar of Illinois* (Chicago: Chicago Legal News, 1879), 282; Roy P. Basler, ed., *The Collected Works of Abraham Lincoln* (New Brunswick, N.J.: Rutgers University Press, 1953–1955), 2:48, 2:97; King, "Riding the Circuit with Lincoln," *American Heritage* 6 (Feb. 1955): 108; J. G. Holland, *Holland's Life of Abraham Lincoln* (1866; rpt. Lincoln: University of Nebraska Press, 1998), 97–98. In February 1863 the Illinois legislature added Effingham and Shelby counties to the Fourth Judicial Circuit to complement Clark, Cumberland, Coles, and Edgar counties. See *Mattoon Independent Gazette*, Feb. 28, 1863, p. 2, col. 3.

allow the sergeants to prove that the men they arrested were deserters, and also refused to recognize the authority of military officers in Indiana to arrest persons in Illinois, or to take them out of the state against their free will. It would be a violation of "state rights," he said; it was the duty of Illinois to protect the men.¹⁰ Constable informed the sergeants that they had failed to show authority to make arrests in Illinois and that he was holding them over on bonds of \$500 each to appear in court on the following Thursday to answer to the charge of kidnapping. They were released on their bonds. He then told the deserters that they were discharged from the sergeants' custody and were free.¹¹

News of the arrest of the two sergeants and the release of the deserters reached Indianapolis U.S. Army headquarters promptly. There, Indianapolis post commander Carrington received the news. Carrington, commander of the Eighteenth U.S. Infantry regiment, a Connecticut-born, Yale-educated attorney and abolitionist closely allied with Secretary of the Treasury Salmon P. Chase, had been posted to Indiana in the summer of 1862 to superintend the mustering of new volunteer regiments. While in Indianapolis Carrington formed a close working relationship with Indiana Governor Oliver P. Morton. Carrington notified his immediate military superior, Brigadier General Horatio G. Wright, commander of the Department of the Ohio, which encompassed the states of Ohio, Michigan, Indiana, Illinois, and parts of Kentucky, with headquarters in Cincinnati, Ohio. On the evening of Monday, March 9, Carrington wired to Wright: "If it be deemed best by you to have a force at Marshal[*i*] on Thursday to take charge of sergeants as soon as their securities appear with them I will attend to it or any other orders you deem best." Carrington also informed Wright that he had wired Secretary of War Edwin M. Stanton at the War Department in

¹⁰*Daily Illinois State Journal*, Apr. 8, 1863. See also *Daily Express*, Mar. 10, 1863; John McFarland, affidavit, Mar. 24, 1863, series 1, box 1, folder 10, Carrington Family Papers, Manuscripts and Archives, Yale University Library, New Haven, Conn.

¹¹See Charles H. Constable, copy of affidavit, Mar. 8, 1863, Exhibit "W," case file NN-2716, box 1808, in Records of the Office of the Judge Advocate General (Army) (RG 153), National Archives and Records Administration, Washington, D.C. The military commission case file in which Constable's statement appears as a prosecution exhibit was that for Harrison H. Dodd, the leader of the Indiana Sons of Liberty conspiracy who was tried for treason in Indianapolis in the autumn of 1864. Carrington, who assembled the evidence for the trial by the judge advocate general, considered the efforts to aid the escape of deserters from the U.S. Army in the winter and spring of 1863 to be part of the general conspiracy to weaken the federal government's war effort. *Daily Illinois State Register*, Apr. 8, 1863.

Washington, D.C., and Illinois Governor Richard Yates, who had left Springfield a week previous and was in Washington on state business. Yates was not to return to Illinois for two more weeks.¹²

Wright took stock of the situation and acted. On Tuesday, March 10, he wrote to Yates, then in Washington, in reply to a letter the governor had sent on February 27 that the general had only then received requesting a large force of troops be sent to Illinois. Wright wrote that he agreed with the governor in the need for more troops in Illinois but that he had no troops to send. He suggested that Yates confer with Stanton on the matter, especially in light of the “interference of some of the civil authorities” regarding the arrest of deserters in the state. Wright assured the governor that the army would cooperate with him to “put down rebellion against the constituted authorities.”¹³ Wright also telegraphed Stanton that day reporting the news of the arrest of the sergeants and discharge of the deserters by Constable. He wrote that he would order Carrington to rearrest the deserters, free the sergeants, and arrest the judge “for harboring and protecting deserters and to hold him in military custody till further orders.” Significantly, Wright wrote: “As such action may be of the highest importance politically, I give this notice in order to enable the Department to countermand the order in time, if thought best to pursue any other course.”¹⁴ However, no orders countermanding Wright’s instructions to arrest the judge came from Washington.

That morning, Wright telegraphed and wrote a letter to Carrington with instructions. In the telegram the general ordered Carrington to send a strong force to Marshall to “liberate” the sergeants, arrest the judge for harboring and protecting deserters, and rearrest the deserters. His letter provided fuller

¹²Carrington to Wright, Mar. 9, 1863, Entry 3491, Telegrams Received, Department of the Ohio, 3:135, in Part I, Records of United States Army Continental Commands, 1821–1920 (RG 393) (hereafter cited as U.S. Army Continental Commands Records), National Archives and Records Administration; Carrington to Richard Yates, Mar. 9, 1863, box 11, folder 6, Yates Family Papers, Abraham Lincoln Presidential Library, Springfield, Ill. In reporting to Yates that Constable had released captured deserters, Carrington noted: “the deserters were assured that the lodge of Knights of the Golden Circle would not let them be taken to the army.” Springfield’s *Daily Illinois State Journal* reported that Yates had left for Washington and would be gone for two to three weeks (see Mar. 4, 1863, p. 3, col. 2). The newspaper reported that he returned to Springfield on March 28 (see Mar. 30, 1863, p. 3, col. 2).

¹³Wright to Yates, Mar. 10, 1863, Entry 3482, Letters Sent, 2:113–14, in U.S. Army Continental Commands Records. See also Wright to Lorenzo Thomas, Mar. 10, 1863, Entry 3482, Telegrams Sent, 2:113, and Wright to Yates, Mar. 10, 1863, Entry 3487, Telegrams Sent, 2:34, both in *ibid.*

¹⁴Wright to Stanton, Mar. 10, 1863, Entry 3487, Telegrams Sent, 2:32, in *ibid.*

instructions: "It is of the utmost importance that this duty be performed in the most delicate manner possible, as regards the civil authorities, and the command of the force should, therefore, be given to a discreet officer." Wright continued:

In my judgment the action of the court in the matter in question is not only an usurpation on the part of the civil authorities, but is as decided an act of treason as could be committed by the most devoted adherent of the rebel cause. Such conduct must be put down, or the evident sympathizers with the rebellion will prove the destruction of the Union; and if the civil authorities refuse or neglect to act in matters of this sort, coming more properly within their jurisdiction, the military must take up the matter and apply the remedies prescribed by the military laws, and the customs of war in time of actual danger.

Wright informed Carrington that he had informed Stanton of his orders, given their political gravity, to allow his opportunity to countermand them.¹⁵

Carrington received his orders and acknowledged their significance. He reported by wire that he had "secured eminent counsel" and would investigate matters in Illinois himself "to ensure full knowledge of facts." Illinois and Indiana, he wrote, were "on the verge of outbreak, involving vital issues to the country which sooner or later must be squarely met." Later that afternoon Carrington telegraphed that one of the deserters had voluntarily turned himself in and sworn out a statement that the story the deserters told that they were paroled prisoners was a lie and their paroles forgeries; the soldiers had deserted their regiment six months ago.¹⁶

Carrington's warning of "outbreak" in Indiana and Illinois grew from his investigations into the background of the rampant desertion from the army then occurring. Soon after arriving in Indiana in August 1862, he learned of secret, organized efforts by Indiana people to encourage and aid desertion. Carrington reported his findings and his conclusions to Washington officials, who acknowledged their significance and supported his continued efforts to learn more about the "secret society" behind the plots. With the announcement of the Emancipation Proclamation and other war policies in early 1863, most notably the Enrollment Act calling for a federal draft, resistance to the government increased, and reports circulated among Republican government leaders and army commanders of a plot by antiwar Democrats to take the Old Northwest states out of the federal union to form their own confederacy. Yates received numerous

¹⁵Wright to Carrington, Mar. 10, 1863, Entry 3487, Telegrams Sent, 2:33, and Wright to Carrington, Mar. 10, 1863, Entry 3482, Letters Sent, 2:114–15, both in *ibid.*

¹⁶Carrington to Wright, Mar. 11, 1863, Entry 3491, Telegrams Received, 3:136, 3:137, in *ibid.*; William M. Belser, affidavit, Mar. 11, 1863, Letters Received, box 1, Entry 5381, Records of the Provost Marshal General's Bureau (Civil War) (RG 110) (hereafter cited as Provost Marshal General's Bureau Records), National Archives and Records Administration.

warnings and intelligence of antigovernment plots in his state, and during the upheaval of the 1863 General Assembly he warned of revolutionary efforts by the Democrats. Clark County residents wrote to the governor warning of imminent danger from a secret organization in their midst called the Knights of the Golden Circle (KGC). Throughout Illinois and other neighboring states, Democrats were arming themselves and vowing resistance to the government. Uri Manly, a leading Republican from Marshall, wrote in February that the local "K.G.C." planned resistance to the draft and a bloody uprising. He wrote: "I daily hear men on our streets say they are armed and ready to resist arrests & drafts—what is true here, is true in every county in Illinois." On March 7, the day before the sergeants were arrested, Manly wrote the governor that he learned that KGC lodges met all over the state; people there made "open resistance" to the federal draft law. "The whole thing is managed by the K.G.C." He further noted that "We have deserters here who bid defiance to the Government—are armed—say they will not go back nor be taken & that they have plenty to defend them—I think it is so."¹⁷

Carrington proceeded to follow his orders in a carefully orchestrated plan. At ten o'clock on the night of Wednesday, March 11, a special train left Indianapolis loaded with a force of 240 men—200 infantry from the Sixty-third Indiana Infantry regiment and 40 troopers from the Fifth Indiana Cavalry regiment, with Carrington in personal command. Having arranged with railroad executives to clear the rails, the train raced west to Terre Haute, reaching the town around midnight, Thursday, the morning on which the sergeants were to appear in the Clark County Circuit Court. The troops disembarked the train, breakfasted at 2 A.M., and set out on foot and hired horses with wagons hauling ammunition and supplies and marched the approximately fifteen miles southwest to Marshall during the frozen chill of the early morning hours. The roads were frozen, making marching difficult. The cavalry force rode ahead, dressed in civilian clothes, to mingle in the streets of Marshall and secure seats in the front row of the courtroom. Four troopers, also in civilian clothes, were ordered to accompany Carrington to the courthouse as if he were merely to make an appearance for the arrested sergeants. At about 9:30 A.M., the infantry marched in plain view to the

¹⁷See *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (Washington, D.C.: GPO, 1899), ser. 3, 3:4, 3:19–20, ser. 2, 5:235; Yates to Oliver P. Morton, Jan. 19, 1863, box 10, folder 7, Uri Manly to Yates, Feb. 2, 1863, box 10, folder 9, and Manly to Yates, Mar. 7, 1863, box 11, folder 5, all in Yates Family Papers. In the March 7 letter, Manly also wrote that "Judge Constable gave the [Clark County grand] jury a special charge on the personal liberty act of the late Legislature. The Grand Jury has [indicted?] the conscription bill and open resistance is to [be] made to its execution in this county." In subsequent months, army officers in Illinois received reports of secret organizations and civilians arming and drilling to resist government authority in Clark County. See J. L. Wallar to "Dear Sir," May 31, 1863, [Uri Manly?] to James Oakes, June 6, 1863, and Wells Sponable to Oakes, July 28, 1863, all in Letters Received, box 1, Entry 5381, Provost Marshal General's Bureau Records.

courthouse square and surrounded the courthouse, allowing none to enter or leave the building. We "took them completely by surprise," wrote Captain John H. Farquhar of the Nineteenth U.S. Infantry regiment. It appeared that none inside the courthouse except the soldiers knew what was happening outside. When the county prosecutor finished his charge to the grand jury regarding the two sergeants, by a prearranged plan the two sergeants left their seats in the courtroom and joined the troopers. The sheriff called out to the prisoners to return to their seats. Carrington, according to his memoir of the incident, arose from his seat, whereupon the judge asked who he was. The colonel replied, and then informed the sheriff that the courthouse was surrounded. The sheriff went to the courtroom windows, saw the troops surrounding the courthouse, and informed the prosecutor, who ended his charge to the jury, at which time Judge Constable adjourned the court for lunch. Carrington then approached Constable, politely introduced himself, and informed him of his arrest and requested he prepare himself to depart for Indianapolis. "The arrest was quietly made, [and] well managed by the Col," wrote Farquhar. After Carrington dined with the judge and prosecutor at Constable's residence, and the "Union people" of Marshall fed the soldiers of the expedition an "excellent" impromptu meal, at 3 P.M. they set out for Terre Haute and Indianapolis. Carrington reported that a crowd of five hundred to seven hundred people had assembled on the courthouse square, and that indiscriminate shots were fired from the crowd. But no violence occurred during the column's long march to Terre Haute. The next day the judge was carried by rail to Indianapolis, where he was kept at the Bates House hotel.¹⁸

The arrest of Constable and his removal to Indianapolis began a period of intense legal and political deliberations, involving a number of prominent attorneys and politicians. The issue before them was the question: how was the matter to be handled? Major R. M. Corwine, judge advocate for the Department of the Ohio, was the first jurist to confront the case. Corwine had been presented with similar cases of interference with the arrest of deserters by civil authorities

¹⁸See "The Constable Case," in Carrington Papers, microfilm roll number 2, Indiana State Archives, Indiana Commission on Public Records, Indianapolis. In this memoir, Carrington noted that an old cannon was fired three times by local people to warn "the country around that the trial day for the kidnappers had arrived, and the popular rendezvous would be at Marshall." This warning may explain the large assembly of armed men in the town. See John H. Farquhar to Fannie Farquhar, Mar. 13, 1863, Box 50, John Farquhar Papers, in Eugene Gano Hay Papers, Library of Congress, Washington, D.C. See also Carrington to Wright, Mar. 13, 1863, Entry 3491, Telegrams Received, 3:138, in U.S. Army Continental Commands Records. Wright forwarded the news to Stanton. See Wright to Stanton, Mar. 13, 1863, Entry 3487, Telegrams Sent, 2:40, in *ibid*. The Republican newspaper in Marshall reported that Carrington "gave as a reason for bringing so large a number of men, that he had been told that resistance would be made." See (Marshall) *Flag of Our Nation*, Mar. 14, 1863. Farquhar wrote: "We had many rumours as to their preparation but did not credit it, and found none had been made to meet such a force as we had with us. . . . The object in taking so large a force was to prevent a collision, but if brot [*sic*] on to succeed."

within the department. In one case, a sheriff in Ohio released a deserter who had been arrested and temporarily held in the county jail. In another case, a probate court judge in Cincinnati was passing out writs of habeas corpus in large numbers to soldiers who wanted out of their enlistments. In the first case, Corwine opined that the sheriff was liable to prosecution under federal law and recommended that he be arrested and tried in federal court. In the latter case he suggested that congressional action was necessary to deal with "this growing abuse by the civil authorities." Corwine was apprised of the Constable matter immediately after Wright learned of it, and drafted a quick opinion that the judge had no power to interfere with the deserters. He later advised that the deserters be rearrested and Constable arrested that "he may be punished." Within the next week, on March 16, he drafted an opinion that "Judge Constable should be tried by a military commission."¹⁹

Carrington, an attorney himself, from the beginning doubtless understood the legal ramifications of the matter as well as the political and military ramifications. He secured "eminent counsel" immediately after being ordered to make the arrest. Just who this counsel was or were is not certain, though it is known that he consulted with several prominent and able lawyers. Carrington had contacted Richard W. Thompson, a former Congressman from Terre Haute, and the leading Republican (and former Whig) in the seventh congressional district in western Indiana and an acquaintance of Constable. Carrington telegraphed Thompson to come to Indianapolis to advise him on the legal fine points. Thompson knew Constable and his reputation as a partisan conservative Democrat who opposed the federal government's war policies.²⁰ While in Indianapolis on March 11, the day before the Illinois court date, Thompson drafted an opinion regarding the legality of the arrest of the two sergeants. Thompson noted first of all that Constable had released the deserters without suing out a writ of habeas corpus. That act, he wrote, was "illegal and arbitrary, a defiance of the military authority of the United States." If judges had such authority they could destroy the "foundation of our whole military system," cripple the effort to return deserters to their duty, and subordinate federal military authority to state judicial authorities. Soldiers were "amenable only to military law for all military offenses. The civil

¹⁹See abstracts of correspondence received from Corwine, Registers of Letters Received, Entry 3489, 2:83, 2:91, 2:97, 2:100, in U.S. Army Continental Commands Records. The text of Corwine's opinion does not survive.

²⁰"Judge Constable was well known for his Democratic leanings and his detestation of military encroachment on civil authority." See Klement, *Copperheads in the Middle West*, 68–69. Constable was involved in another significant violent incident, the shooting in Charleston, Illinois, on March 28, 1864. See Coleman and Spence; Sampson, "'Pretty damned warm times'"; John Scott Parkinson, "Bloody Spring: The Charleston, Illinois Riot and Copperhead Violence during the American Civil War" (Ph.D. diss., Miami University, 1998); Peter J. Barry, "The Charleston Riot and Its Aftermath: Civil, Military, and Presidential Responses," *Journal of Illinois History* 7 (2004): 82–106.

tribunals cannot, from their very nature, have anything to do with these offenses.” Thompson noted he was “astonished” by Constable’s actions, and volunteered to accompany Carrington on his expedition to Illinois, where he could convince the judge of his error and have the sergeants discharged.²¹

Other prominent figures called on for legal guidance both prior to and after the expedition to make the arrest included Caleb B. Smith, Lincoln’s first secretary of the interior who had resigned to take a seat on the federal bench in Indiana. Smith’s successor as secretary of the interior, John P. Usher, a Terre Haute attorney who was home for a brief visit, was also consulted. Significantly, Usher telegraphed Lincoln from Terre Haute on March 11 and asked: “Has [*sic*] the dispatches of Col. Carrington been received? Shall he proceed according to the order of Gen[era]l Wright? I think he should do so. Please answer me here immediately.”²² The U.S. Attorney for Indiana was called on subsequent to the arrest. Thompson, Usher, and perhaps others were personally acquainted with Constable—and his partisanship.²³ Morton, himself a fine attorney, was also involved in the deliberations.²⁴ There is no documentation to suggest that Yates was involved in the legal and political deliberations before or after the arrest.

On March 15 Usher followed up his telegram to Lincoln with a long letter, written from Terre Haute, sending details of the Constable matter provided in a Terre Haute newspaper clipping. Usher urged the president to follow a stern, unforgiving policy. “You will observe,” he wrote, “that [Constable] is now endeavoring to deny the truth of his certificate & says that he made no order relative to the deserters. Himself & friends see that if his order is true, that he

²¹Thompson to Carrington, Mar. 11, 1863, series 1, box 1, folder 8, Carrington Family Papers. For biographical information on Thompson, see Charles Roll, *Colonel Dick Thompson: The Persistent Whig*, Indiana Historical Collections 30 (Indianapolis: Indiana Historical Bureau, 1948); Mark E. Neely Jr., “Richard W. Thompson: The Persistent Know Nothing,” *Indiana Magazine of History* 72 (1976): 95–122.

²²Usher to Lincoln, Mar. 11, 1863, Abraham Lincoln Papers, Manuscript Division, Library of Congress. The telegram was received at Washington at 10 P.M., at about the time Carrington’s force departed for Terre Haute. No reply from Lincoln to Usher’s query has been located. Usher rode on the train to Terre Haute with the troops of the expedition, and “very kindly furnished [to Capt. Farquhar] with his Buffalo overshoes, warm gloves and neck furr and Col [Richard W.] Thompson with his very easy saddle horse.” See John H. Farquhar to Fannie Farquhar, Mar. 13, 1863.

²³A Republican attorney and friend from Marshall wrote to Usher about Constable: “His partisan feelings are plain and palpable to all. So much so indeed, that he seems to be proud of it and seems to take more pains to let it be seen than to hide it.” See J. Harlan to Usher, June 29, 1862, John P. Usher Papers, Kansas State Historical Society, Topeka.

²⁴See “The Constable Case,” pp. 4, 6, 9; John Hanna to Carrington, Mar. 11, 1863, series 1, box 1, folder 8, Carrington Family Papers. According to Morton’s biographer, William Dudley Foulke, the governor told Carrington: “I want protection for these soldiers. I want you to use the utmost power of the government to rescue them and to punish those who have prosecuted them.” Though the account is not documented, Foulke probably obtained it from Carrington while preparing the biography. See Foulke, 1:384.

cannot escape punishment. . . . Col Carrington informed me that Constable had said to him" that the judge had told the mother of one of the deserters that her son was free to go. "There can be no doubt," wrote Usher, that Constable "understood & intended" to release the deserters. The Secretary attacked Constable's character, noting that "the fact is from the day he ceased to be a Whig he has been a malignant in society without principles or moral restraint, & I hope that the kindly remembrances of former days will not induce you to extend an undeserved clemency to him." Constable "and others of like perfidy" were the cause of the country's problems. Usher noted that the Democrats of the Illinois and Indiana state legislatures were attempting to usurp the command of those states' militias from their Republican governors in an attempt to "precipitate immediate revolution":

They have organized all over the West the K.G.C.s[.] Thousands and thousands of arms, mostly revolvers, have been and are daily being distributed among them, and my judgment is that the true policy is to punish them to the extent of the law when you get your hand upon them. . . . There is no propriety in endeavoring to conciliate the disloyalists among us. All efforts of that sort embolden them and discourage the Union men. I have observed sufficiently since I came west to be entirely satisfied that there will be no resistance to the complete execution of any of the laws, if entire and unyielding firmness is exhibited on the part of those who are to administer them.²⁵

The military commanders intended to follow a strict policy. On March 18, following Corwine's recommendation, Wright wrote to Carrington: "It is of the first importance to the interests of the Military Service to have Judge Constable tried by a military commission for his action in the matter of the four deserters released by him." Wright forwarded Corwine's legal opinion advising that a military commission be convened, and requested "that if in the opinion of your legal advisers, such a commission have jurisdiction in the matter, you will forward the names" of officers to try the case. Wright also forwarded a copy of Major General Henry W. Halleck's General Order Number One for guidance.²⁶

²⁵Usher to Lincoln, Mar. 15, 1863, Abraham Lincoln Papers.

²⁶Wright to Carrington, Mar. 18, 1863, Entry 3482, Letters Sent, 2:146, in U.S. Army Continental Commands Records. Halleck's General Orders, dated January 1, 1862, governed military commissions in the Department of the Missouri amidst the chaos of guerrilla raids and martial law. It later served as a model in other departments. See Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991), 36–39.

The matter thus rested with the Indiana legal figures. At the time, alarming events in Indiana and Illinois may have impinged on the legal deliberations. Illinois' legislature had recessed in February amid tumult and rancor. Indiana's General Assembly was in almost violent partisan turmoil. A serious violent outbreak involving resistance to arresting deserters occurred in Indiana that greatly alarmed the state's political leaders at that moment. Carrington called in both of the Indiana U.S. senators—one Democratic, one Republican—for consultations to calm the political factions. Carrington, who had for several months been collecting intelligence on secret organizations intent on aiding and harboring deserters and resisting the draft, reported to Washington his knowledge of the activities of the secret group called the Knights of the Golden Circle. Reports that the deserters in Clark County had been promised protection from military arrest by local members of the KGC added to the urgency of the matter. Moreover, as Usher had reminded Lincoln, military authorities at the departmental and state levels in Ohio, Indiana, and Illinois had come to the conclusion that those disaffected, antiwar groups were attempting to arm themselves with the intent to resist federal authority.²⁷

Richard Thompson continued to work on the issue of whether to try Constable in a civil or military court and found it a difficult one to decide. On March 21 he telegraphed Carrington from Terre Haute, "the question is too important to decide hastily." That night, however, he sent a long opinion laying out his argument. He reviewed the facts of the case, and concluded that in the matter of the arrest of the two sergeants, Constable was not guilty of any offense, either civil or military. The two soldiers had been arrested on a warrant issued by a local justice of the peace; the charge had then been properly brought before the judge. "If," wrote Thompson, "he made improper decisions—either admitting illegal or excluding legal evidence—they would amount to nothing more than judicial error; into which all judges are liable to fall." However, the matter of discharging the deserters from the custody of the sergeants was different. "By this act he was unquestionably guilty of a military offense," wrote Thompson, and under Halleck's general orders would be liable to a military trial. Thompson concluded that a military commission should be empanelled.²⁸

²⁷See Tredway, 167; Thomas A. Hendricks to Carrington, Mar. 20, 1863, and Henry S. Lane to Carrington, Mar. 20, 1863, both in series 1, box 1, folder 9, Carrington Family Papers; *Daily Express*, Mar. 10, 1863; *War of the Rebellion*, ser. 2, 5:363–67. For works describing partisan conflict in Illinois, see Sampson, "You cannot kill off the party": The Macon County Democracy in the Civil War Era," *Journal of Illinois History* 2 (1999): 246–72; Susan Sessions Rugh, "Awful Calamities now upon Us": The Civil War in Fountain Green, Illinois," *Journal of the Illinois State Historical Society* 93 (2000): 9–42.

²⁸Thompson to Carrington, Mar. 21, 1863, series 1, box 1, folder 9, Carrington Family Papers.

But Thompson's argument favoring a military trial strangely disappeared overnight. The next day, March 22, Carrington telegraphed Wright in Cincinnati to report that "eminent counsel says that Constable case is for civil tribunal. Judge Usher of [I]nterior agrees with them. Maj Corwin[e] is also of this view so far as regards the discharging of the deserters." Carrington asked if he should send Constable to the federal district court in Springfield. Wright replied and acknowledged the legal advice. "The opinion of eminent counsel and of Judge Usher," he wrote, "would seem to be conclusive against the trial of Judge Constable by a military commission; or at any rate of the propriety of referring his case for the action for the civil tribunals." Wright ordered Carrington to send Constable to Springfield with the charges and evidence.²⁹ However, later that evening Carrington wired departmental headquarters to report: "R.W. Thompson telegraphs that he may change his opinion and will come here tomorrow. Please suspend action as to Judge Constable until I send their written opinion." Wright again deferred to the legal minds in Indianapolis.³⁰

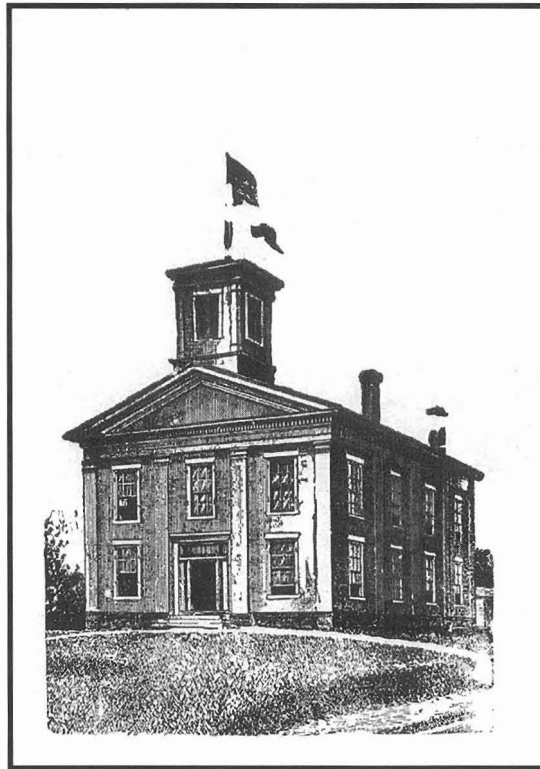
Carrington's advisers continued their debates. That they were political as well as legal deliberations cannot be underestimated. Those Republican jurists no doubt weighed the political advantages and disadvantages that trying the judge by military commission would entail. A tough policy like that suggested by Usher to Lincoln had its attractions, as it would appease Republican partisans who would be gratified at the punishment of a Democratic foe. But amid the partisan tumult occurring in Illinois and Indiana, a military trial of a prominent Democrat would have the potential to precipitate widespread violence. Carrington ultimately telegraphed Wright on March 25 that "after further conference in Judge Constable's case US district att[orney] concurring the same conclusion reached to turn over the case to the civil authorities." Wright gave the order.³¹

Constable, who had given his parole as a gentleman to Carrington and was allowed the freedom of Indianapolis during his arrest, was taken by an army officer to Springfield on April 2 and handed over to federal court officers where his case was scheduled for a hearing before the U.S. District Court for the Southern District of Illinois. Constable was released on his parole until the trial. Army

²⁹Carrington to Wright, Mar. 22, 1863, Entry 3491, Telegrams Received, 3:154 (received at Cincinnati at 10:15 A.M.), and Wright to Carrington, Mar. 22, 1863, Entry 3482, Letters Sent, 2:152, both in U.S. Army Continental Commands Records.

³⁰Carrington to Wright, Mar. 22, 1863, Entry 3491, Telegrams Received, 3:157 (received at Cincinnati at 9:45 P.M.), and Wright to Carrington, Mar. 23, 1863, Entry 3487, Telegrams Sent, 2:66, both in *ibid.*

³¹Carrington to Wright, Mar. 25, 1863, Entry 3491, Telegrams Received, 3:166, and Wright to Carrington, Mar. 26, 1863, Entry 3487, Telegrams Sent, 2:78, both in *ibid.* See also J. P. Siddall, opinion, Mar. 24, 1863, series 1, box 1, folder 9, Carrington Family Papers. The U.S. Marshal in Illinois telegraphed Carrington inquiring if Constable had been released. See J. S. Clark to Carrington, Mar. 23, 1863, series 1, box 1, folder 9, Carrington Family Papers.



The Clark County seat was moved to Marshall in 1838. The county's third courthouse was completed there in 1839 and served the county until 1887.

authorities and the U.S. attorney meanwhile assembled affidavits and witnesses to present their case against the judge charging him with violating the new Enrollment Act's prohibition on encouraging desertion. The hearing was held April 7 before U.S. District Judge Samuel H. Treat, himself a conservative Democrat appointed to the bench in 1855.³² McFarland and his commanding officers testified as to the events of their arrest and the release of the deserters. The prosecuting attorney for Clark County testified that everyone—he, the judge, the sergeants, the deserters, and their attorney—had been ignorant of the law of desertion, so that Constable released the deserters because the sergeants failed to produce their authority for making the arrests. Constable's defense attorneys submitted that McFarland had not produced any authority to make arrests in Illinois, and focused scrutiny on the order from the Indiana adjutant general to

³²For information on Judge Treat, see Daniel W. Stowell, *Samuel H. Treat: Prairie Justice* (Springfield: Illinois Historic Preservation Agency, 2005). The Springfield Democratic newspaper made light of the *Chicago Tribune's* characterization of Treat in the context of his dismissal of Constable as a "violent . . . partisan" and "malignant copperhead." *Daily Illinois State Register*, Apr. 14, 1863, p. 2, col. 1.

McFarland to make arrests in Indiana. The government prosecution did not press the case vigorously. The hearing was an anticlimax to the events that had led up to it, as evidenced by one newspaper's comment: "The counsel for either party were not disposed to go into elaborate arguments upon the testimony or points at issue, and after a few brief remarks, submitted the case for the consideration of the Judge." The matter ended quickly when Treat dismissed the charge and released Constable.³³

In conclusion, what are we to make of this episode? First, this narrative serves to point to the errors of fact and interpretation in previous accounts of the arrest. Frank Klement asserted that Carrington "exceeded his authority" by sending soldiers into Illinois to arrest deserters. That assertion does not hold up, as the sergeants acted under War Department general orders that, unlike civil jurisdictions, did not limit actions to district boundaries. The Democratic newspaper in Springfield, commenting on the hearing before Treat and taking their cue from Constable's defense attorneys' arguments, noted: "The principal point in the case seemed to be whether the sergeants held to bail by the judge produced authority to arrest deserters in the state of Illinois." The newspaper cited the order of the adjutant general of Indiana produced by the sergeants originally that limited the efforts of military forces to arrest deserters to Vigo and surrounding Indiana counties, but did not mention federal War Department orders instructing military officers to arrest deserters.³⁴ Klement also claimed that an "embarrassed" Carrington called on Morton "to save him" in his Illinois predicament. However, there is no evidence to suggest Morton somehow shielded Carrington in this matter, nor did Klement produce any. Rather, Carrington reported up through the military chain of command, took his orders from his departmental commander, and Morton appears only to have participated in the deliberations over how to handle the case. Indeed, after Wright gave orders to Carrington to arrest the judge and liberate the sergeants, notifying the War Department to allow them to countermand the order, Carrington contacted the War Department himself to see if Stanton wished Wright's order countermanded. That action prompted mild reprimands from the War Department for attempting to go behind his superior's back.³⁵ We have seen that Lincoln and Stanton, when advised beforehand of the plan to arrest Constable—the president's erstwhile

³³*Illinois State Journal*, Apr. 8, 1863; *Daily Illinois State Register*, Apr. 8, 1863, p. 2, cols. 1, 3–4. An examination of the records of the United States Federal District Court for the Southern District of Illinois, held at the National Archives-Great Lakes Region, Chicago, finds no record of a writ of habeas corpus having been filed in the Constable case. My thanks to Martin J. Tuohy of the National Archives-Great Lakes Region, for his invaluable assistance in this matter.

³⁴*Daily Illinois State Register*, Apr. 8, 1863.

³⁵Klement, *Copperheads in the Middle West*, 69. See also E. R. S. Canby to Carrington, Mar. 12, 1863, series 1, box 1, folder 8, and Lorenzo Thomas to Carrington, Mar. 20, 1863, series 1, box 1, folder 9, both in Carrington Family Papers.

friend—made no effort to stop its execution. Furthermore, they appear to have made no effort to influence the deliberations of the military commanders once the arrest was made. Therefore, contrary to one historian's depiction of the episode, Wright and Carrington acted with the full support of national leaders at Washington.³⁶

Klement also characterized Carrington's expedition into Illinois to arrest the judge as having been carried out with the "finesse of Falstaff," implying that it was clumsily and badly handled. Again, the evidence suggests otherwise. Arresting and carrying off a judge from amidst an armed crowd of hostile onlookers without bloodshed is evidence of careful planning and execution. It should be noted that Carrington's immediate superior, Wright, rewarded Carrington (who was confirmed by the U.S. Senate to the rank of brigadier general of volunteers at the time, too) by promoting him to the command of the military district of Indiana less than two weeks after the action.³⁷

The Constable case also addresses the relationship between civil and military authorities during the Civil War. Historians have rightly focused their attention on the military's violations of civil liberties in making arrests of civilians, suppressing newspaper speech critical of the Lincoln administration, and other depredations. However, little attention has been given to civil interference in military matters. Historian James G. Randall noted the "clash[es] of authority" that occurred between civilian and military authorities, but concluded that "jurisdictional controversies served as annoyances and embarrassments rather than actual obstructions" to federal authority.³⁸ Randall wrote in hindsight at a time that celebrated the rise of federal authority, and could write dismissively of competing authority. But Lincoln's administration and military authorities did not treat them as mere annoyances. As we have seen, all the Republican legal and political advisers consulted, as well as the military commanders involved, viewed the case as a dangerous challenge to the authority of the federal government to conduct the war and suppress the rebellion. Nonetheless, they chose to submit the case to the federal court with the strong likelihood that it would be dismissed by a judge sympathetic to the defendant rather than have a military trial with the possibility of violent backlash, suggesting that political realities prevailed over dogmatic calls for swift and severe punishment. The contrast between the Constable case and the action taken by military commanders one month later with the arrest of former

³⁶See Tredway, 212.

³⁷Klement, *Dark Lanterns*, 26. See also Klement, "Carrington and the Golden Circle Legend in Indiana during the Civil War," 42.

³⁸Randall, *Constitutional Problems Under Lincoln*, rev. ed. (Urbana: University of Illinois Press, 1951), 429, 431. See also Harold M. Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (New York: Alfred A. Knopf, 1973), 240.

Ohio Congressman Clement L. Vallandigham, the Old Northwest's leading critic of the war, is notable. In that instance, Major General Ambrose E. Burnside, Wright's successor as commander of the Department of the Ohio, arrested the Ohio politician for violating his hard-line policy of tolerating no criticism of the war policies of the Lincoln administration. The result was riot, mayhem, and a vigorously reenergized Democratic opposition that plagued Lincoln and military authorities for many months to come.³⁹

Constable returned to the bench after his release from arrest, and from his judicial seat and on the political hustings continued to plague the Republicans of eastern Illinois, who complained that his release from arrest had only served to energize and embolden the Democrats in their opposition to the war and the war policies of the Lincoln administration. Soldiers despised him, and in January 1864, a group of soldiers confronted the judge on the streets of Mattoon and forced him to take an oath of allegiance to the federal government. Clark and surrounding counties in Illinois and Indiana continued to be dangerous flashpoints, with the Coles County riot of March 1864 being just one example of violent clashes between military forces and antiwar Democrats in the area. But with Republican election victories in the autumn of 1864 and the suppression of rebellion in the South, Constable's fortunes waned. Illinois Republican legislators, once again in the majority, in a calculated fashion whittled down the judge's circuit from six counties to two in early 1865. Constable died later that year.⁴⁰

³⁹For information on the arrest of Vallandigham and its consequences, see Klement, *The Limits of Dissent*; William Marvel, *Burnside* (Chapel Hill: University of North Carolina Press, 1991), 234–38. Morton criticized the tough stance taken by Burnside and his clumsy interference in politics in arresting Vallandigham and clamping down on Democratic political speech. See Towne, “Killing the Serpent Speedily: Governor Morton, General Hascall, and the Suppression of the Democratic Press in Indiana, 1863,” *Civil War History* 52 (2006): 41–65.

⁴⁰James Oakes to J. B. Fry, June 6, 1863, Entry 5359, 1:26–41, and Manly to Oakes, June 6, 1863, Box 1, Entry 5381, both in Provost Marshal General's Bureau Records; *Weekly Vincennes Western Sun*, July 25, 1863. A witness to the assault on Constable wrote: “Judge Constable who was passing through Mattoon, was taken by the same mob [soldiers] and made to consent to the same oath, though in doing so he shed tears.” See John Monroe to Richard Yates, Feb. 6, 1864, box 15, folder 2, Yates Family Papers; Parkinson, 163; *Weekly Vincennes Western Sun*, Feb. 11, 1865. Linder wrote that Constable “departed this life some years ago, and the manner of that departure I shall not dwell upon. It was sad, but not dishonorable; and I do not believe that he left a single stain, blemish or blot upon his reputation.” See Linder, 283. One historian, citing Linder, called Constable's death a suicide. See King, *Lincoln's Manager*, 355n3.